

## 48A C.J.S. Judges § 225

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VIII. Liabilities

#### B. Nature and Scope of Acts and Functions

##### § 225. Nonofficial acts

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#) 36

**The rule which exempts a judge from civil liability for the judge's judicial acts does not apply to administrative, legislative, or executive functions.**

The broad doctrine of judicial immunity does not apply to acts which are not judicial.<sup>1</sup> Judicial immunity does not extend to judges' administrative, legislative, or executive functions<sup>2</sup> or to acts which are purely ministerial in character.<sup>3</sup> Hence, when a judge acts ministerially or is required to do a ministerial act, the judge is responsible for error or misconduct in like manner and to the same extent as all other ministerial officers.<sup>4</sup> A judge is so liable whether he or she acts personally or through a clerk whom he or she has authorized to perform the act.<sup>5</sup> Also, failure of a judge to perform the ministerial duties imposed on his or her office may result in liability for any damage resulting from such failure.<sup>6</sup>

However, the question whether a ministerial act is one which the judge is under a duty to perform is a judicial question, for the determination of which the judge is immune from liability.<sup>7</sup> In any event, when a judge is performing a nonjudicial function, the judge may enjoy a qualified good-faith immunity from civil action<sup>8</sup> or invoke a limited waiver of sovereign immunity for alleged negligence in the performance of ministerial duties.<sup>9</sup>

A judge's involvement in initiating a criminal prosecution or a civil contempt proceeding may constitute nonjudicial acts exposing him to liability.<sup>10</sup> The test to be applied in such case is whether initiating accusatory processes is a function normally performed by a judicial officer.<sup>11</sup>

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## Footnotes

1 U.S.—[Pyle v. Hatley](#), 239 F. Supp. 2d 970 (C.D. Cal. 2002).  
Fla.—[Kalmanson v. Lockett](#), 848 So. 2d 374 (Fla. 5th DCA 2003).

2 U.S.—[Edwards v. Wilkinson](#), 233 F. Supp. 2d 34 (D.D.C. 2002), aff'd, 2003 WL 1907995 (D.C. Cir. 2003).

**Code of conduct for attorneys**  
Judicial immunity is not extended to judges acting to promulgate a code of conduct for attorneys; while the issuance of a bar code is a proper function of the court, propounding such a code is not an act of adjudication but one of rulemaking.  
U.S.—[Forrester v. White](#), 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988); Supreme Court of Virginia v. Consumers Union of U. S., Inc., 446 U.S. 719, 100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980).

3 U.S.—[Shore v. Howard](#), 414 F. Supp. 379 (N.D. Tex. 1976).  
Iowa—[Huendling v. Jensen](#), 168 N.W.2d 745 (Iowa 1969).  
Utah—[Logan City v. Allen](#), 86 Utah 375, 44 P.2d 1085 (1935).  
Character of functions as ministerial or judicial, see § 144.

**Routine matters**  
As respects question of the existence of judicial immunity, routine matters which may be performed by a clerk are ministerial.  
Iowa—[Huendling v. Jensen](#), 168 N.W.2d 745 (Iowa 1969).

4 U.S.—[Fain v. Hall](#), 463 F. Supp. 661 (M.D. Fla. 1979).  
Utah—[Allen v. Holbrook](#), 103 Utah 319, 135 P.2d 242 (1943), opinion modified on other grounds on reh'g, 103 Utah 599, 139 P.2d 233 (1943).

5 Ala.—[Rowe v. Johnson](#), 214 Ala. 510, 108 So. 604 (1926).

6 Tex.—[Heyn v. Massachusetts Bonding & Insurance Co.](#), 110 S.W.2d 261 (Tex. Civ. App. Dallas 1937), writ dismissed w.o.j., (Jan. 12, 1938).

7 Ariz.—[Davis v. Burris](#), 51 Ariz. 220, 75 P.2d 689 (1938).

8 U.S.—[Atcherson v. Siebenmann](#), 458 F. Supp. 526 (S.D. Iowa 1978), vacated in part on other grounds, 605 F.2d 1058 (8th Cir. 1979).

9 Ky.—[Greene v. Com.](#), 349 S.W.3d 892 (Ky. 2011).

10 U.S.—[Sevier v. Turner](#), 742 F.2d 262 (6th Cir. 1984).

11 U.S.—[Sevier v. Turner](#), 742 F.2d 262 (6th Cir. 1984).

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